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**IN THE  
COURT OF APPEALS OF INDIANA**

WILLIAM TOBAR, II,  
Appellant-Defendant,

VS.

STATE OF INDIANA,  
Appellee-Plaintiff.

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No. 71A03-0612-CR-569

APPEAL FROM THE ST. JOSEPH SUPERIOR COURT  
The Honorable William H. Albright, Judge  
Cause No. 71D01-0601-MR-1

**April 11, 2007**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BAILEY, Judge**

## **Case Summary**

Appellant-Defendant William Tobar, II (“Tobar”) appeals his aggregate sixty-year sentence for Felony Murder, a felony,<sup>1</sup> and two counts of Criminal Confinement, a Class B felony.<sup>2</sup> We affirm.

## **Issue**

Tobar presents the sole issue of whether his sentence is appropriate in light of his character and the nature of the offenses.

## **Facts and Procedural History**

On December 30, 2005, Tobar and his accomplices entered Sam’s Food Market in South Bend, Indiana. The men ordered that everyone get down on the floor, because it was a robbery. The customers complied. Tobar, who was carrying a semi-automatic handgun, fired one shot into the ceiling. He then approached Preet Singh, the storeowner, and fatally shot him. Tobar took a wallet from Singh’s body. He and his accomplices took cash and cigarettes from the store.

On January 4, 2006, the State charged Tobar with Murder, Felony Murder, Robbery and two counts of Criminal Confinement. On August 24, 2006, the trial court accepted Tobar’s plea of guilty to Felony Murder and two counts of Criminal Confinement. The State dismissed the Murder and Robbery charges. The trial court sentenced Tobar to sixty years for Felony Murder, and fifteen years for each of the Criminal Confinement convictions, to be served concurrently. Tobar now appeals.

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<sup>1</sup> Ind. Code § 35-42-1-1(2).

## Discussion and Decision

Indiana Code Section 35-50-2-3 provides in relevant part: “A person who commits murder shall be imprisoned for a fixed term of between forty-five (45) and sixty-five (65) years, with the advisory sentence being fifty-five (55) years.” Indiana Code Section 35-50-2-5 provides in relevant part: “A person who commits a Class B felony shall be imprisoned for a fixed term of between six (6) and twenty (20) years, with the advisory sentence being ten (10) years.” Tobar claims that his sixty-year sentence is inappropriate in light of the nature of his offenses and his character, and should be revised pursuant to Indiana Appellate Rule 7(B). More specifically, he argues that the trial court failed to give due weight to mitigating circumstances.

In general, sentencing determinations are within the trial court’s discretion. Cotto v. State, 829 N.E.2d 520, 523 (Ind. 2005). “A court may impose any sentence that is authorized by statute and permissible under the Constitution of the State of Indiana, regardless of the presence or absence of aggravating circumstances or mitigating circumstances.” Ind. Code § 35-38-1-7.1(d).

Accordingly, a sentencing court is under no obligation to find either aggravating or mitigating circumstances. Rather, the court may impose any sentence within the sentencing range without regard to the presence or absence of such circumstances. “Because the new sentencing statute provides a range with an advisory sentence rather than a fixed or presumptive sentence, a lawful sentence would be one that falls within the sentencing range for the particular offense.” Samaniego-Hernandez v. State, 839 N.E.2d 798, 805 (Ind. Ct.

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<sup>2</sup> Ind. Code § 35-42-3-3.

App. 2005). The sentence imposed upon Tobar was within the statutory sentencing range.

In its sentencing pronouncement, the trial court indicated that it considered Tobar's history of juvenile adjudications to be aggravating and considered his remorse, prompt admission of guilt and age (eighteen years) to be mitigating. Tobar does not contest the fact that he has a history of juvenile delinquency. Moreover, we observe that a "trial court is not obliged to agree with the defendant as to the weight or value to be given proffered mitigating circumstances." Weaver v. State, 845 N.E.2d 1066, 1073 (Ind. Ct. App. 2006), trans. denied.

However, in some circumstances this Court may revise a sentence that is authorized by statute. Indiana Appellate Rule 7(B) provides that we "may revise a sentence authorized by statute if, after due consideration of the trial court's decision, [we find] that the sentence is inappropriate in light of the nature of the offense and the character of the offender." Nevertheless, we do not merely substitute our opinion for that of the trial court. Bennett v. State, 787 N.E.2d 938, 949 (Ind. Ct. App. 2003), trans. denied.

Tobar has identified for our consideration evidence that he believes suggests a lesser sentence than that imposed. He contends that his guilty plea and remorse are deserving of substantial consideration. We accept the trial court's determination of remorse, as this is a matter akin to the determination of credibility. The trial court, unlike this Court, "has the ability to directly observe the defendant and listen to the tenor of his or her voice." Corrales v. State, 815 N.E.2d 1023, 1025 (Ind. Ct. App. 2004). Too, Tobar accepted some responsibility for his actions by pleading guilty.

Indiana courts have recognized that a guilty plea is a significant mitigating factor in

some circumstances because it saves judicial resources and spares the victim from a lengthy trial. Ruiz v. State, 818 N.E.2d 927, 929 (Ind. 2004). Where the State reaps a substantial benefit from the defendant's act of pleading guilty, the defendant deserves to have a substantial benefit returned. Sensback v. State, 720 N.E.2d 1160, 1164 (Ind. 1999). However, a guilty plea is not automatically a significant mitigating factor. Id. at 1165. Here, the record demonstrates that Tobar received a significant benefit in that the State dismissed the robbery charge against him in exchange for his decision to plead guilty.<sup>3</sup>

Tobar also emphasizes his role as the father of three young children. However, we are not persuaded that this circumstance is deserving of significant mitigating weight. Our Supreme Court has stated, “[m]any persons convicted of serious crimes have one or more children and, absent special circumstances, trial courts are not required to find that imprisonment will result in an undue hardship.” Dowdell v. State, 720 N.E.2d 1146, 1154 (Ind. 1999). Tobar had never been employed nor had he provided child support for any of his children.

The character of the offender is such that juvenile attempts at rehabilitation failed to deter him from criminal activity. Indeed, he had been released from juvenile detention for only six months before the commission of the instant offenses. Tobar was not supporting his children and was abusing drugs and alcohol. He is mildly mentally retarded and suffers from Attention Deficit Hyperactivity Disorder (“ADHD”). Nevertheless, he refused ADHD medication. On the other hand, he demonstrated remorse, admitted that he rather than one of

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<sup>3</sup> The State also dismissed the murder charge. However, this did not create an additional benefit to Tobar because double jeopardy principles would prohibit his conviction of both Murder and Felony Murder arising

his accomplices was the shooter, and decided to plead guilty. As to the nature of the offenses, Tobar confined innocent bystanders at gunpoint. He then shot the storeowner without provocation to accomplish financial gain.

In sum, the evidence presented at the sentencing hearing does not suggest a maximum sentence. Neither does it militate toward a minimum sentence. Tobar has not persuaded this Court that the sixty-year sentence, five years beyond the advisory sentence for murder, is inappropriate.

Affirmed.

SHARPNACK, J., concurs.

MAY, J., concurs in result.